SINGAPORE REPORTS.

TAN CHENG YOU v. REX.

[App. Crim. Juris. (Brown, J.) November 6, 1946]

Food Control Proclamation 1945, Sections 15 and 61(1) — Food Control (Prohibition of Movement) Order 1946, Section 2 — Onus of proof — Confiscation of Sampan — Meaning of "vehicle".

In this case the appellant was convicted by the District Judge on two charges:—

(1) transporting a controlled article from one place to another without a written authorization contrary to Section 2 of the Food Control (Prohibition of Movement) Order 1946;

(2) having in his possession a controlled article in such circumstances as to raise a reasonable suspicion that an offence has been or is intended to be committed, contrary to Section 15 of the Food Control Proclamation No. 10, 1945.

It appeared that a sampan in charge of the appellant was intercepted by a Revenue Officer near a kelong near Jurong. On examination the sampan was found to contain 18 bags of white Siamese rice. The appellant could not produce any documents. In his evidence he said he had bought the rice at Tajong Balai and was taking it to Pulau Buloh but had been blown into Singapore waters by a storm.

Held, (1) that the evidence of the appellant showed that he was taking the rice from Tanjong Balai, which is in Dutch territory, to Pulau Buloh, which is also in Dutch territory; that there was no evidence that he was transporting the rice from one place to another place within the Colony; and that it was obviously no offence under the Food Control (Prohibition of Movement) Order to transport a controlled article from one place to another outside the Colony;

(2) that in a charge under Section 15 of the Food Control Proclamation, as soon as the prosecution has proved (a) possession or control, and (b) circumstances of reasonable suspicion that an offence has been committed or was intended, the burden of proof shifts and it is for the accused to satisfy the Court that such offence has not been committed and was not intended to be committed by him;

(3) that a sampan falls within the words "vehicle or other article" in Section 16(1), paragraph (i) of the Food Control Proclamation; and

(4) that the power of confiscation given by Section 16 (1), paragraph (i) of the Food Control Proclamation, applies only to a vehicle or other article which is the property of the accused, and as there was no evidence in this case that the sampan was the property of the appellant, the order of confiscation must be set aside.

Held also obiter: (1) that the charges in this case under Section 2 of the Food Control (Prohibition of Movement) Order, 1946 and under Section 15 of the Food Control Ordinance should have been framed in the alternative;

(2) that under Section 16 (1) of the Food Control Proclamation the Court has power to confiscate both the article in respect of which the offence was committed and any vehicle or other article, the property of the accused, by means of which the offence has been committed.

MAGISTRATE'S APPEAL.

C. F. J. Ess for the appellant.

A. W. Bellamy for the respondent.

Brown, J. : — This is an appeal from conviction and sentence passed by the learned District Judge on two charges :—

(1) transporting a controlled article from one place to another without a written authorization, contrary to section 2 of the Food Control (Prohibition of Movement) Order, 1946;

(2) having in his possession a controlled article in such circumstances as to raise a reasonable suspicion that an offence has been or is intended to be committed, contrary to section 15 of the Food Control Proclamation No. 10, 1945.

Upon the first charge the appellant was sentenced to pay a fine of $1,000 or 6 months rigorous imprisonment in default. And upon the second charge he was sentenced to 6 months rigorous imprisonment. The rice and the sampan were ordered to be confiscated.

The evidence was that on the morning of August 22nd a Revenue Officer intercepted a sampan in charge of the appellant near a kelong near Jurong. On examination the sampan was found to contain 18 bags of white Siamese rice. On being asked for his written authorization, the appellant replied that he had no documents of any kind. He said that he had bought the rice in Tanjong Balai at 70 cents a katty. There was evidence that the controlled price of rice in Singapore was 8 cents a katty. In his evidence before the Court the appellant said that having bought the rice in Tanjong Balai he was taking it to Pulau Buloh, where he was driven out of his course by a storm and was washed up near the kelong where he was arrested. Pulau Buloh is in Dutch territory. And it is to be observed that if the Tanjong Balai, where he bought the rice, is in Singapore he would have been committing an offence under the Food Control (Prohibition of Export) Order, 1946. But in cross-examination the appellant stated that Tanjong Balai, where he bought the rice, is in Dutch territory. He further stated that he had the receipt for the rice with him in Court. The appellant was not represented, and he was not asked to produce the receipt which might possibly have thrown some light upon the question whether he bought the rice in Singapore or in Dutch territory.

The appeal is brought on the following grounds :—

(1) that the learned District Judge's finding upon the question of fact is against the weight of evidence;

(2) the District Judge was wrong in ordering the sampan to be confiscated under paragraph (i) of section 16 (i) of the Proclamation;

(3) that the two charges in effect comprise one offence and that they should have been framed in the alternative, and that in passing two sentences the learned District Judge was sentencing the appellant twice for the same offence;

(4) that the sentence was excessive.

Upon the question of fact, there is the uncontradicted evidence of the appellant that the Tanjong Balai, where he bought the rice, is in Dutch territory, and that he was taking it to Pulau Buloh, which is also in Dutch territory. That being so, the prosecution has failed to prove that he was transporting the rice from one place to another place within the Colony; and it is obviously no offence under the Food Control (Prohibition of Movement) Order to transport a controlled article from one place to another outside the Colony. Mr. Bellamy, for the respondent, does not support the conviction on the first charge.

But upon the second charge the appellant was charged with being in possession of the rice in such circumstances as to raise a reasonable suspicion that an offence against the Proclamation had been or was intended to be committed. It is impossible to say that the circumstance of being found in charge of a sampan in Singapore waters with 18 bags of rice on board does not raise a reasonable suspicion that the offence of transporting, contrary to the Pronibition of Movement Order, had either been committed or was intended to be committed. And in a charge under Section 15, as soon as the prosecution has proved (a) possession or control, and (b) circumstances of reasonable suspicion that an offence has been committed or was intended, the burden of proof shifts and by the last two lines of the section it is for the accused to "satisfy the Court that such offence has not been committed and was not intended to be committed by him."

How has he discharged the onus which those words placed upon him? He has stated in evidence (1) that he was taking the rice from Dutch territory to Dutch territory; (2) that he was blown into Singapore waters by a storm. In support of (1) there is his further evidence that he purchased the rice at 70 cents a katty, which, as is generally known and as is stated in the Petition (although it is not in evidence), is less than he could have purchased it on the black market in Singapore. Against that we have the denial by the Revenue Officer that the appellant made any mention of the storm at the time of his arrest, and we also have the evidence of the Revenue Officer that the weather was alright. Upon that evidence the District Judge found that the accused had not discharged the onus which Section 15 places on him, and I am not prepared to interfere with his finding of fact.

Upon the order that the sampan should be confiscated Mr. Ess has submitted that a sampan does not fall within the words "vehicle or other article" in para. (i) of Section 16 (1) of the Proclamation. "Vehicle" is not defined and therefore recourse must be had to the ordinary dictionary meaning of the word. Mr. Bellamy has referred to *Webster's* New International Dictionary (2nd Edition) in which the meaning of the word "vehicle" is given as follows :—

> That in or on which a person or thing is or may be carried from one place to another, esp. along the ground, also through the air; any moving support or container fitted or used for the conveyance of bulky objects; **a means of conveyance.**

Although one may have become accustomed, from considering Road Traffic legislation where the word "vehicle" is defined in a more restricted sense, to giving the word a more limited meaning, this definition of Webster's is that which one would expect if one considers the root meaning of the word and the Latin word from which it is derived. Clearly a sampan is something in which a person or thing may be carried from one place to another, and is a means of conveyance. If it were necessary for a decision on this ground of appeal, I should be prepared to hold that a sampan is a vehicle. That in any case it is brought within the scope of the paragraph by the words "or other article" I have no doubt at all.

But Mr. Bellamy has very fairly and properly brought to my notice another point, which must dispose of this ground of the appeal in the appellant's favour. By the paragraph under which this order for confiscation was made, the vehicle or other article must be the *property of the accused*. There is no evidence that the sampan was the appellant's property, and no question appears to have been put to him with a view to establishing whether it was his property or not. The evidence only shows that he was in charge of it.

Although this point is conclusive in the appellant's favour on this ground of appeal, the question was also raised in argument whether the word "or" where it first appears in the words "or any vehicle or other article" in paragraph (i) of Section 16 (1) is to be construed conjunctively or disjunctively. That paragraph gives the Court power to order the confiscation of "any article in respect of which an offence has been

committed *or* any vehicle or other article, the property of the accused, by means of which such offence has been committed." To hold that the word "or" here is to be construed disjunctively would mean that the Court, in the present case for example, had to elect either to order confiscation of the rice *or* to order confiscation of the sampan, but that it could not order the confiscation of both. If that had been the intention of the legislating authority I should have expected it to have conferred upon the Court a "discretion", or to have used some similar term. And I am of the opinion that it was the clear intention of the legislating authority, in using the word "or" where it first appears in the words "*or* any vehicle or other article", that it should be construed conjunctively, and to give the Court the power to confiscate both the article in respect of which the offence was committed *and* any vehicle or other article.

The ground of appeal which complains that the two charges comprise one offence does not now arise because I have already held that there is no sufficient evidence to support the conviction on the first charge. But I agree with Mr. Ess that the charges should have been framed in the alternative.

There remains the question of whether the sentence of 6 months rigorous imprisonment on the second charge is excessive. The maximum sentence for this offence is a fine not exceeding $5,000 or imprisonment for 2 years, or both. Having regard to all the circumstances of this case, I do not consider that the sentence of 6 months rigorous imprisonment was unreasonable.

The Order will therefore be :—

(1) that the conviction and sentence on the first charge is quashed.

(2) that the order for confiscation of the sampan is quashed.

(3) that the conviction and sentence on the second charge is confirmed.

Order Accordingly.

LOW BEE HOE (w) v. MORSALIM

AND

GOH TIEN LIM v. LEE ANG CHIN.

[App. Civil Juris. (Worley, J.) November 2, 1946]

Landlord and Tenant — Increase of Rent (Restriction) Ordinance 1939, Section 8, Proviso (a) — Rent must be fourteen days in arrear at the date of the issue of the Summons for the proviso to apply — Tender of rent before date of issue of Summons — Finding of fact based on alleged custom that rent is payable in advance, where there is no deposit, held to be wrong — No such custom proved — Whether acceptance of rent after notice to quit can constitute waiver of such notice where tenant is a statutory tenant — Claim for mesne profits — Whether there can be a claim for double rent under Section 15 of the Civil Law Ordinance against a Statutory tenant — Whether notice of intended defence under the Increase of Rent (Restriction) Ordinance must be given under Order 15, Rule 6 (1) (e) of the District Court Rules.

These were two separate appeals from the Civil District Judge, Singapore, which were dealt with on appeal in one judgment, as similar questions of law arose in them.

In the first case, the landlord claimed possession of the ground floor of No. 204, Queen Street, Singapore, which had been let to the tenant at $30/- a month this sum including an unspecified amount for light and water. The landlord also claimed $60/- as arrears of rent for March and April 1946 and mesne profits at the rate of $30/- a month from the 1st of May 1946 until delivery of the premises. It appeared that on the 11th of April 1946 the tenant sent to the landlord a money order for $30/- being the rent for March 1946. This was refused by the landlord on the 15th of April and on that day a notice to quit was served expiring on the 31st of May. To this the tenant replied on the 17th of April denying that he was in arrears of rent for March and April and alleging that when the rent for March fell due on the 15th of that month he had tendered it to the landlord who refused to accept it. With his letter he sent $60/- in payment of rent for March and April and stated his intention to refuse to vacate the premises. On the 24th of April the landlord returned the $60/-. On the 20th of May the tenant sent to the landlord $30/- cash as rent for May. On the 4th of June the landlord accepted the May rent and also the $60/- previously refused stating that this acceptance was without prejudice to his bringing ejectment proceedings. The tenant remained in possession after the month of May and on the 20th of June 1946 the landlord took out a summons in the District Court under Section 60 of the Courts Ordinance. The matter came before the Civil District Judge for hearing on the 30th of July. The crux of the case was whether the rent was payable in advance on the first day of each month as alleged by the landlord or on the fifteenth day as alleged by the tenant. The District Judge found as a fact that the June rent was payable on the 1st of June, one of his reasons for coming to this conclusion being that in his view there was a definitely recognised custom in Singapore in the case of monthly tenancies where there is no express agreement as to the date of payment that, where a deposit has been paid, rent is payable in arrear, but that, where no deposit has been paid, each month's rent shall be payable in advance on the 1st day of the month. The District Judge found therefore that the rent was 14 days in arrear by the 20th of June 1946, when the summons was taken out, and so proviso (a) to Section 8 of the Increase of Rent (Restriction) Ordinance could be relied on by the landlord. He therefore gave judgment for the landlord and ordered that the tenant should give up possession on or before the 15th day of September 1946 and that the landlord should recover from the tenant $105/- being mesne profits from the 1st of June to the 15th of September at $30/- a month and costs. The tenant appealed against this judgment.